

## ORDER AMENDING RULES

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Idaho Appellate Rules as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

- Rule 12.1. Permissive appeal in custody cases.**

\*\*\*

- ### **Rule 17. Notice of appeal – Contents.**

\*\*\*

\*\*\*

- (a) That a copy of this notice of appeal has been served on the reporter, each reporter of whom a transcript has been requested as named below at the address set out below:

Name and address: \_\_\_\_\_

Name and address: \_\_\_\_\_

Name and address: \_\_\_\_\_

(b)(1) [ ] That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) [ ] That the appellant is exempt from paying the estimated transcript fee because \_\_\_\_\_

(c)(1) [ ] That the estimated fee for preparation of the clerk's or agency's record has been paid.

(2) [ ] That the appellant is exempt from paying the estimated fee for the preparation of the record because \_\_\_\_\_

(d)(1) [ ] That the appellate filing fee has been paid.

(2) [ ] That appellant is exempt from paying the appellate filing fee because \_\_\_\_\_

(e) That service has been made upon all parties required to be served pursuant to Rule 20: (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code-).

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

/s/ Attorney's signature

\_\_\_\_\_  
(Name of Attorney or Firm for Appellant)  
Attorneys for the Appellant

3. That Rule 19 be, and the same is hereby, amended to read as follows:

**Rule 19. Request for additional transcript or clerk's or agency's record - payment.**

\*\*\*

(fg) **Form.** The request for additional transcript or record, made after the filing of the notice of appeal or notice of cross-appeal, shall be in substantially the following form:

(Respondent's Attorney's Name)  
Attorney for Respondent

Post Office Address  
Phone Number

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR \_\_\_\_\_ COUNTY  
(IN THE (PUBLIC UTILITIES COMMISSION) (INDUSTRIAL  
COMMISSION) OF THE STATE OF IDAHO)

(Title of original action or )  
proceeding together with the ) Case No. \_\_\_\_\_  
additional designation of parties ) REQUEST FOR ADDITIONAL  
as appellant and respondent ) (TRANSCRIPT) (RECORD)

TO: THE ABOVE NAMED APPELLANT(S) (CROSS-APPELLANT(S))  
AND THE PARTY'S ATTORNEY, AND THE (REPORTER) (CLERK)  
OF THE ABOVE ENTITLED (COURT) (ADMINISTRATIVE  
AGENCY).

NOTICE IS HEREBY GIVEN, that the Respondent (Cross-Respondent)  
in the above entitled proceeding hereby requests pursuant to Rule 19,  
I.A.R., the inclusion of the following material in the reporter's transcript or  
the (clerk's) (agency's) record in addition to that required to be included by  
the I.A.R. and the notice of appeal:

1. Reporter's transcript: e.g.  
(The entire reporter's standard transcript as defined in Rule 25(a), I.A.R.)  
(The entire reporter's standard transcript supplemented by the following:)  
(Voir dire examination of jury)  
(Closing arguments of counsel)  
(The following reporter's partial transcript:)  
(The testimony of witness "X")  
(Conferences on requested instructions)  
(Instructions verbally given by court)
2. Clerk's or Agency's Record: e.g.  
(Affidavit of "X")  
(Plaintiff's requested instructions)  
(Notice to take deposition of "Y")
3. I certify that a copy of this request for additional transcript(s) has been  
served on each court reporter of whom a transcript is requested as named  
below at the addresses set out below:

Name and address: \_\_\_\_\_

Name and address: \_\_\_\_\_

Name and address: \_\_\_\_\_

~~was served upon the (reporter) (clerk).~~ I further certify that this request for additional record has been served upon the clerk of the district court or administrative agency and upon all parties required to be served pursuant to Rule 20 (and upon the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code-).

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

/s/ Attorney's signature

\_\_\_\_\_  
(Name of Attorney or Firm for Respondent)  
Attorneys for the Respondent

(When certification is made by a party instead of the party's attorney the following affidavit must be executed.)

State of Idaho )  
 ) ss.  
County of \_\_\_\_\_ )

\_\_\_\_\_ being sworn, deposes and says:

That the party is the (respondent) (cross-respondent) in the above-entitled request and that all statements in this request are true and correct to the best of his or her knowledge and belief.

\_\_\_\_\_  
Signature of (Respondent)  
(Cross-Respondent)

4. That Rule 20 be, and the same is hereby, amended to read as follows:

**Rule 20. Filing and service of documents.**

A notice of appeal or notice of cross-appeal from a district court or an administrative agency, a petition for rehearing, and a petition for review to the Supreme Court are not deemed filed until they are physically received by the clerk of the respective court or administrative agency. For the purpose of filing all other documents involved in the appellate process, and for the purpose of service of all documents upon parties to an action, including service of a copy of a notice of appeal, a petition for rehearing or a petition for review, if the document is transmitted by mail such filing and service shall be deemed complete upon mailing. A certificate of mailing signed by an attorney that a document was properly mailed in the

United States mail with postage prepaid to named persons on a day certain shall create a rebuttable presumption that such mailing was so made. At the time of the filing of a notice of appeal or cross-appeal, the appellant or cross-appellant shall serve copies thereof upon all persons who were parties and who appeared in the proceedings below, whether or not they are parties to the appeal, and upon each court reporter from whom a transcript is requested. At the time of the filing of any other document in the appellate process, the party filing the same shall serve a copy thereof upon all other parties to the action who are parties to the appeal, or who were parties in the proceeding below and who could be affected by the appeal; provided, if the parties to be served are numerous or cannot be found the trial court may order substituted service by publication, or otherwise, upon motion of the serving party. The party shall certify such service and the date and manner of service on the original document filed. Upon receipt of the notice of appeal, the Clerk of the Supreme Court shall notify the court reporter(s) identified in the Clerk's Certificate of Appeal that a transcript has been requested.

5. That Rule 23 be, and the same is hereby, amended to read as follows:

**Rule 23. Filing fees and clerk's certificate of appeal - Waiver of appellate filing fee.**

\*\*\*

(f) **Certificate of Appeal.** Along with the notice of appeal or notice of cross-appeal, ~~The clerk of the district court or the administrative agency shall, within 14 days from the filing of the notice of appeal or cross-appeal,~~ prepare and send to file with the Clerk of the Supreme Court a Certificate of Appeal in the form provided by these rules. Provided, if the appeal is from the denial by the trial court of an application for waiver of fees, the clerk shall attach to the Certificate of Appeal copies of the motion or application for waiver of fees, all affidavits and documents presented in support of the motion or application and the order of the trial court denying the same.

(g) **Form of Certificate of Appeal.** The Certificate of Appeal made by the clerk of the district court or administrative agency for filing with the Supreme Court shall be in the following form:

\*\*\*

Was District Court Reporter's transcript requested? \_\_\_\_\_  
If so, name of ~~reporter~~ each reporter of whom a transcript has been  
requested as named below at the address set out below:

Name and address: \_\_\_\_\_

Name and address: \_\_\_\_\_

Name and address: \_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_  
Clerk of the (District Court)  
Secretary of the  
(Public Utilities Commission)  
(Industrial Commission)

6. That Rule 24 be, and the same is hereby, amended to read as follows:

**Rule 24. Reporter's transcript – Number – Estimate of fees –  
Payment to clerk in trust – Time for preparation -  
Waiver of reporter's fee.**

\*\*\*

(d) **Time for Preparation of Transcript.** The reporter of any trial or proceedings shall prepare and lodge with the district court or with the administrative agency the requested transcript(s) according to the following:

(1) If the transcript is estimated according to section (b) of this rule to be less than 100 pages in length, the transcript shall be due within 30 ~~within 63~~ days from the date of filing of the first notice of appeal. ~~An extension of time for the preparation and lodging of the transcript may be obtained by the reporter only by order of the Supreme Court.~~

(2) If the transcript is estimated according to section (b) of this rule to be more than 100 pages in length but less than 500 pages in length, the transcript shall be due within 63 days from the date of filing of the first notice of appeal.

(3) If the transcript is estimated according to section (b) of this rule to be more than 500 pages in length, and the court reporter estimates that additional time above the 63 days set out in section (d)(2) will be needed to complete the transcript, then the court reporter must file a proposed completion schedule with the Supreme Court. The court will then determine the due date for the lodging of the transcript with the district court.

(4) In the event a court reporter fails to provide a written summary of the anticipated length of the reporters transcript

according to part (b) of this rule, the reporter's transcript shall be due within 30 days from the date of the filing of the first notice of appeal.

(e) **Extensions of Time for Preparation of Transcript.** The reporter of any trial or proceeding shall prepare and lodge with the district court or with the administrative agency the requested transcript within the time limits set out in subsection (d) of this rule. If the reporter is unable to meet this deadline an extension of time must be requested from the Idaho Supreme Court. An extension of time for the preparation and lodging of the transcript may be obtained by filing a motion for extension of time with the Idaho Supreme Court at least five days before the transcript is due unless good cause is shown for the failure to timely file a motion.

(f) **Past Due Transcripts.** In the event a transcript is 14 days past due, the clerk of the Idaho Supreme Court shall notify the court reporter, trial court administrator, administrative district judge and the district judge responsible for supervising the reporter, and the trial court administrator shall take appropriate action which may include (a) imposing disciplinary action, (b) identifying another official reporter in the district who can provide coverage for court proceedings while the transcript is completed, (c) implementing a performance improvement plan that requires weekend and evening hours to complete the transcript(s), (d) identifying a freelance court reporter who will complete the transcript and be compensated as appropriate, or (e) with approval of the Administrative Director of the Courts, removing the court reporter from the courtroom until the transcript is complete and hiring a different court reporter to provide coverage for court proceedings. In the event a transcript is reassigned to a different court reporter, the court reporter must immediately turn over all notes of the particular proceeding to the trial court administrator. The trial court administrator shall notify the clerk of the Supreme Court of the action taken regarding the transcript, including the anticipated date of filing and any reassignment.

(eg) **Waiver of Reporter's Fee.** The payment of the reporter's fee as required by this rule may be waived by the district court pursuant to section 31-3220, Idaho Code, in accordance with the local rules of the judicial district of the district court.

7. That Rule 30 be, and the same is hereby, amended to read as follows:

**Rule 30. Augmentation or deletions from transcript or record.**

Any party may move the Supreme Court to augment or delete from the settled reporter's transcript or clerk's or agency's record. Such a motion shall be accompanied by a statement setting forth the specific grounds for the request and attaching a copy of any document sought to be augmented

to the original motion and to two copies of the motion which document must have a legible filing stamp of the clerk indicating the date of its filing. Any request for augmentation with a transcript that has yet to be transcribed must identify the name of the court reporter(s) along with the date and title of the proceeding(s), and must contain a certificate of service on the named reporter(s). The motion and statement shall be served upon all parties. Any party may within fourteen (14) days after service of the motion, file a brief or memorandum in opposition thereto. Unless otherwise expressly ordered by the Supreme Court such motion shall be determined without oral argument. The reporter's transcript and clerk's or agency's record may also be augmented or portions deleted by stipulation of the parties and order of the Supreme Court. Any motion for augmentation and any response thereto shall be filed with the Clerk of the Supreme Court with the number of copies specified in Rule 32(e). The filing of a motion to augment shall not suspend or stay the appellate process or the briefing schedule.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of March, 2008.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Appellate Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause this Order to be published in one issue of *The Advocate*.

DATED this \_\_3rd\_\_ day of January, 2008.

By Order of the Supreme Court

\_\_\_\_\_/s/\_\_\_\_\_  
Daniel T. Eismann, Chief Justice

ATTEST:\_\_\_\_\_/s/\_\_\_\_\_  
Stephen W. Kenyon, Clerk